Mok Yong Chuan v Mok Yong Kong & Anor

HIGH COURT (JOHOR BAHRU) — CIVIL SUIT NO MT1–22–289 OF 1998
SYED AHMAD HELMY J
31 MARCH 2005

Land Law — Indefeasibility of title and interests — Fraud — Rectification — Rectification of name of owner of land on document of title — Whether application for rectification was based on fraud of first defendant

Land Law — Indefeasibility of title and interests — Fraud — Whether indefeasibility was deferred or immediate — Previous transaction in rectification of name of original owner alleged to be fraudulent — Whether bona fide purchaser for value acquired an indefeasible title

Land Law — Indefeasibility of title and interests — Fraud — Whether proved

The plaintiff and the first defendant were brothers and the essence of the dispute concerned the 2/3 share in the property ('the property') which was at one time registered under the name of 'Boh Yong Kwang' which the first defendant maintained was a variant spelling of his name. The first defendant had caused a rectification of the spelling of the name 'Boh Yong Kwang' on the documents of title to the property to his name 'Mok Yong Kong' and thereafter transferred the property to the second defendant. The plaintiff claimed for declaratory reliefs that the rectification of the name 'Boh Yong Kwang' to 'Mok Yong Kong' on the title of the property by the first defendant and the subsequent transfer of the property to the second defendant be declared unlawful and void. The plaintiff predicated his claim on fraud by the first defendant and conspiracy by the second defendant. He alleged that the first defendant had committed fraud in holding himself out as 'Boh Yong Kwang' and in rectifying the spelling of 'Boh Yong Kwang' to 'Mok Yong Kong' on the documents of title to the property as 'Boh Yong Kwang' was their late father and not the first defendant. The second defendant denied any conspiracy with the first defendant to defraud the plaintiff and averred that as a bona fide purchaser for value and upon registration he had acquired an indefeasible title under s 340 of the National Land Code 1965.

Held, dismissing the plaintiff's claim:

(1) Not only had the plaintiff failed to adduce any evidence that 'Boh Yong Kwang' was their late father, there were overwhelming evidence to the contrary. The evidence adduced by the defendants all point to the fact that 'Boh Yong

Kwang' was the first defendant. Some of these evidence were either admitted by the plaintiff or totally uncontradicted (see para 14).

(2) The plaintiff had completely failed to establish the first essential element of his claim, even on balance of probabilities (let alone beyond reasonable doubt). On the other hand, the defendants did not sit back and simply require the plaintiff to prove his case (although in law they were entitled to do so). The defendants took pro-active steps to adduce more than adequate evidence (both documentary and oral) to show that 'Boh Yong Kwang' was indeed the first defendant; and that 'Boh Yong Kwang' could not have been their late father. This reason alone was sufficient to defeat the plaintiffs claim (see para 15).

(3) During trial, the plaintiff did not seriously pursue his allegation of fraud and conspiracy against the second defendant. He practically abandoned it. That being the case, the fact that the second defendant was bona fide purchaser (as defined under the National Land Code) remained undisputed. It followed that the second defendant had acquired an indefeasible title (regardless of whatever the position may be between the plaintiff and the first defendant). The plaintiff's claim, so far as it related to the property and to the second defendant, must fail (see para 18).

(4) Currently the law adopts the doctrine of immediate indefeasibility in Malaysia. This put the position of the second defendant beyond doubt (see para 19); *Adorna Properties Sdn Bhd v Boonsom Boonyanit @ Sun Yok Eng* [2001] 1 MLJ 241 followed.

(5) However, even if one were to apply the doctrine of deferred indefeasibility to the facts of this case, the result would be the same for the reason that the transfer of the property from the first defendant to the second defendant did not involve any element of forgery, technical or otherwise. The memorandum of transfer was not forged. The person who executed it as the transferor (ie the first defendant) was the person who was intended or meant to have executed the same. If at all, the plaintiff's allegation of fraud (which was not established) only concerned a previous transaction (namely the rectification of the spelling of name from 'Boh Yong Kwang' to 'Mok Yong Kong' on the documents of title). It did not concern the transfer from the first defendant to the second defendant. In other words, the transfer from the first defendant to the second defendant was not the 'immediate' dealing in respect of which an allegation of fraud had been made (but not established). That transfer was a dealing that was 'deferred'. It could not be equated with the rectification of the spelling of name, and could not be tainted by whatever allegation that may be made against such rectification (let alone that in this case such allegation had not been proven). The second defendant had an indefeasible title, even if the doctrine of deferred indefeasibilrty was applied (see para 20).

[Bahasa Malaysia summary

Plaintif dan defendan pertama adalah adik beradik dan inti pati pertelingkahan adalah berhubung dengan 2/3 bahagian di dalam hartanah ('hartanah tersebut') yang pada suatu masa dulu didaftarkan di bawah nama 'Boh Yong Kwang' yang mana

didakwa oleh defendan pertama merupakan satu variasi ejaan namanya. Defendan pertama telah membuat pembetulan ejaan nama 'Boh Yong Kwang' dalam dokumen hak milik hartanah tersebut kepada namanya 'Mok Yong Kong' dan selepas itu memindahkan hartanah tersebut kepada defendan kedua. Plaintif menuntut relief-relief perisytiharan bahawa pembetulan nama 'Boh Yong Kwang' kepada 'Mok Yong Kong' pada dokumen hak milik hartanah tersebut oleh defendan pertama dan kemudiannya pemindahan hartanah tersebut kepada defendan kedua tidak sah di sisi undang-undang dan terbatal. Predikat tuntutan plaintif adalah fraud oleh defendan pertama dan komplot oleh defendan kedua. Beliau mendakwa defendan pertama telah melakukan fraud kerana mengatakan dirinya adalah 'Boh Yong Kwang' dan kerana membetulkan ejaan nama 'Boh Yong Kwang' kepada 'Mok Yong Kong' pada dokumen hak milik hartanah tersebut kerana 'Boh Yong Kwang' adalah nama mendiang bapa mereka dan bukannya defendan pertama. Defendan kedua menafikan sebarang komplot dengan defendan pertama untuk melakukan penipuan terhadap plaintif dan menyatakan bahawa sebagai seorang pembeli bona fide dan setelah pendaftaran beliau telah memperoleh hak milik tak boleh sangkal di bawah s 340 Kanun Tanah Kebangsaan 1965.

Diputuskan, menolak tuntutan plaintif:

(1) Bukan hanya plaintif gagal mengemukakan sebarang keterangan yang 'Boh Yong Kwang' adalah mendiang bapa mereka, sebaliknya terdapat keterangan bertentangan yang amat. Keterangan yang dikemukakan oleh defendan-defendan kesemuanya menunjukkan bahawa 'Boh Yong Kwang' adalah defendan pertama. Setengah dari keterangan ini diakui oleh plaintif ataupun tiak disangkal (lihat perenggan 14).

(2) Plaintif telah gagal sama sekali membuktikan elemen-elemen utama tuntutannya, jika pun pada imbangan kebarangkalian (inikan pula melampui keraguan munasabah). Sebaliknya, defendan-defendan tidak berdiam diri dan hanya menunggu plaintif membuktikan kesnya (walaupun di sisi undang-undang mereka berhak berbuat demikian). Defendan-defendan telah mengambil langkah pro-aktif mengemukakan keterangan lebih dari yang mencukupi (berbentuk dokumen dan lisan) untuk menunjukkan yang 'Boh Yong Kwang' sememangnya defendan pertama; dan bahawa 'Boh Yong Kwang' tidak mungkin merupakan mendiang bapa mereka. Sebab ini sahaja sudah mencukupi untuk mengalahkan tuntutan plaintif (lihat perenggan 15).

(3) Semasa perbicaraan, plaintif tidak secara serius meneruskan dakwaan fraud dan komplot terhadap defendan kedua. Beliau mengabaikannya. Dari itu, fakta yang bahawa defendan kedua adalah seorang pembeli bona fide (sebagaimana yang ditafsirkan di bawah Kanun Tanah Negara) tinggal tidak tersangkal. Maka dari itu, defendan kedua telah memperoleh hak milik tak boleh sangkal (tidak kira apapun kedudukan yang mungkin di antara plaintif dan defendan pertama). Tuntutan plaintif, setakat mana yang terlibat dengan hartanah tersebut dan defendan kedua mesti gagal (lihat perenggan 18).

(4) Sekarang ini di Malaysia, undang-undang menggunapakai doktrin tak boleh sangkal segera (lihat perenggan 19); *Adorna Properties Sdn Bhd v Boonsom Boonyanit @ Sun Yok Eng* [2001] 1 MLJ 241 diikut. Ini meletakkan kedudukan defendan kedua melampui keraguan.

(5) Namun, jika pun seseorang ingin menggunapakai doktrin tak boleh sangkal tangguhan kepada fakta-fakta kes ini, hasilnya tetap sama kerana pindah milik hartanah tersebut dari defendan pertama kepada defendan kedua tidak melibatkan sebarang unsur penipuan, secara teknikal ataupun sebaliknya. Memorandum pindah milik tidak dipalsukan. Orang yang memeterainya sebagai pemindahmilik (iaitu defendan pertama) adalah orang yang diniatkan atau orang yang sememangnya perlu memeterai dokumen itu. Kalau ya pun, dakwaan fraud yang dibuat plaintif (yang mana tidak dibuktikan) hanya melibatkan transaksi terdahulu (iaitu pembetulan ejaan nama dari 'Boh Yong Kwang' kepada 'Mok Yong Kong' pada dokumen hakmilik). Ianya tidak melibatkan pindahmilik dari defendan pertama kepada defendan kedua. Dalam lain perkataan, pindahmilik dari defendan pertama kepada defendan kedua bukan urusan 'segera' berhubung dengan dakwaan fraud yang dibuat itu (tetapi tidak dibuktikan). Pindahmilik tersebut adalah satu urusan 'tangguhan'. Ianya tidak boleh disamakan dengan pembetulan ejaan nama, dan tidak boleh dicemari oleh apa-apa dakwaan yang mungkin dibuat terhadap pembetulan tersebut (ini pula dalam kes ini yang dakwaan tersebut belum lagi dibuktikan). Defendan kedua mempunyai hak milik tidak boleh sangkal, walaupun doktrin tak boleh sangkal tangguhan digunapakai (lihat perenggan 20).]

Notes

For cases on fraud on indefeasibility of title and interests, see 8(6) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 2929–2960.

Cases referred to

Adorna Properties Sdn Bhd v Boonsom Boonyanit @ Sun Yok Eng [2001] 1 MLJ 241 (folld)

Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd [1998] 1 MLJ 393 (refd)

Jaafar bin Shaari & Anor (suing as administrators of the estate of Shofiah bte Ahmad, deceased) v Tan Lip Eng & Anor [1997] 3 MLJ 693 (refd)

Kepong Prospecting Ltd & Ors v Schmidt [1968] 1 MLJ 170 (refd)

Tai Lee Finance Co Sdn Bhd v Official Assignee & Ors [1983] 1 MLJ 81 (refd)

Legislation referred to

KC Chow (R Rajaswari with him) (Tay Tee & Nasir) for the plaintiff.
Jerald Gomez (Jerald Gomez & Associates) for the first defendant.
Yeo Yang Poh (YH Ngu with him) (Yeo Tan Hoon & Tee) for the second defendant.

Syed Ahmad Helmy J:

[1] The plaintiffs claim is for declaratory reliefs that the rectification of the name 'Boh Yong Kwang' to 'Mok Yong Kong' on the title of the landed property known

as EMR 697 Lot 1823, EMR 703 Lot 1829 and EMR 712 Lot 1838 ('the property') by the first defendant and the subsequent transfer of the property to the second defendant be declared unlawful and void.

[2] The plaintiff and the first defendant are brothers and the essence of the dispute concerns the 2/3 share in the property which was at one time registered under the name of 'Boh Yong Kwang' which the first defendant maintains is a variant spelling of his name. The first defendant had caused a rectification of the spelling of the name 'Boh Yong Kwang' on the documents of title to the property to his name 'Mok Yong Kong' and thereafter transferred the property to the second defendant.

[3] The plaintiff predicates his claim on fraud by the first defendant and conspiracy by the second defendant. He alleges that the first defendant had committed fraud in holding himself out as 'Boh Yong Kwang' and in rectifying the spelling of 'Boh Yong Kwang' to 'Mok Yong Kong' on the documents of title to the property as 'Boh Yong Kwang' is their late father and not the first defendant.

[4] The first defendant in his defence denies the allegation of fraud and/or conspiracy and avers that the name 'Boh Yong Kwang' refers to him in the Hailanese dialect and that the late father's name was 'Mok Kia Pock'. The first defendant further avers that the plaintiff is estopped from alleging otherwise by reason of expressly having acknowledged the first defendant as the registered owner of the property through the agreement dated 26 January 1985 (exh P10), the Power of Attorney from the first defendant to the plaintiffs agent, one Daud bin Haji Yusoff made on or about 9 July 1979 and the statutory declaration dated 31 May 1997 (P53) from the plaintiff's solicitor's Zainal Abidin bin Mustaffa.

[5] The second defendant denies any conspiracy with the first defendant to defraud the plaintiff and avers that as a bona fide purchaser for value and upon registration he had acquired an indefeasible title under s 340 of the National Land Code 1965.

[6] The trial proper took a total of 13 days and five witnesses were called upon to testify — two for the plaintiff and three for the defendants. The testimony of all five witnesses which commenced from 28 March 2002 to 24 February 2005 took some 12 days and submission was fixed on 31 March 2005. On 31 March 2005 when the matter came up for submission, the plaintiff's counsel requested for adjournment as she was not ready to submit. Both defendant's counsel were prepared and ready to submit. I refused the plaintiff's counsel request for adjournment and proceeded to hear both the defendant's counsel submission and at the end of which I called upon plaintiff's counsel to submit. The plaintiff's counsel again failed to submit.

[7] In the face of the plaintiffs counsel failure to submit the court accordingly proceeded to determine the case based on an evaluation of the evidence adduced both oral and documentary and the submissions of the counsels for both defendants.

[8] It is trite that the plaintiff being the claimant herein is reposed with the burden of proving his case. Since the plaintiffs alleges that the first defendant had committed

fraud in holding himself out as 'Boh Yong Kwang' he must prove that the first defendant is not 'Boh Yong Kwang' and that 'Boh Yong Kwang' was their late father. The burden of proving fraud is one of beyond reasonable doubt and not just on a balance of probabilities — see *Tai Lee Finance Co Sdn Bhd v Official Assignee & Ors* [1983] 1 MLJ 81; *Ang Hiok Seng @ Ang Yeok Seng v Yim Yut Kiu* [1997] 2 MLJ 45.

[9] Turning to the evidence adduced the question arises whether the plaintiff has successfully discharged the burden of proving that 'Boh Yong Kwang' was the late father of the plaintiff and the first defendant. From the evidence it cannot be disputed that both the plaintiffs and first defendant's late father was 'Mok Kia Fook'. The plaintiffs evidence that 'Mok Kia Fook' is 'Boh Yong Kwang' is solely based on his oral testimony as there is no documentary evidence adduced by him, nor is there any oral testimony of supporting witnesses. In the plaintiffs oral testimony in court it had not passed my attention of the presence contradictory features pertaining to his allegation when in cross-examination he stated that 'Boh' could not have been his late father's surname and that 'Boh Yong Kwang' could not have been their late father's name. Though in re-examination the plaintiff attempted to revert back to his original allegation nevertheless to my mind it is too late in the day for the court to just brush aside the contradictory features aforesaid.

[10] The evidence on the contrary establishes overwhelmingly that 'Boh Yong Kwang' was not and could not have been their late father and that 'Boh Yong Kwang' was in fact the first defendant.

[11] Before proceeding to analyse the overwhelming evidence it is only appropriate to address the plaintiffs contention that at the time the property was registered in the name of 'Boh Yong Kwang' on 18.7L1934 the first defendant was only three years old and hence incapable of accepting!the transfer and by reason thereof he had the right to challenge the transfer of the land in the name of the first defendant. The plaintiffs contention is to my mind misconceived as the evidence adduced reveals that the original vendor who sold the land for valuable consideration to Mok Kia Fook (the late father of both the plaintiff and first defendant) who then registered the property in the name of 'Boh Yong Kwang' did not at any time complain or institute any action against the transfers so effected. It is trite law that only parties to the contract is seized with the requisite locus to complain and sue on the contract or transfer — see *Kepong Prospecting Ltd & Ors v Schmidt* [1968] 1 MLJ 170 at p 174; *Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd* [1998] 1 MLJ 393
at p 431. The plaintiff was never a party to the contract and being a stranger thereto he has not suffered any damage or loss. It should also be stressed that in 1934, the National Land Code 1965 had not come into existence and no evidence has been adduced by the plaintiff that the prevailing land law statute applicable then had the requirement of registration of a trust deed.

[12] In any event the first defendant by his subsequent dealings over the property through his agreements with third parties the registration of charge to Bank Bumiputra Malaysia Bhd. on 11 December 1979 and registration of the transfer to

the second defendant on 3 May 1997 without any objections had clearly ratified the contract and transfer by dealing with the property as his own.

[13] Having addressed the plaintiffs contention in the negative an analysis of the evidence presented herein establishes that 'Boh Yong Kwang' is the first defendant as borne out by the following evidence both oral and documentary:

(1) The oral testimony of the first defendant that he has all along been known as 'Boh Yong Kwang' and it remains uncontradicted.

(2) The statutory declaration affirmed by the first defendant on 29 July 1974 (D71) and 10 December 1979 (P9) that the name 'Boh Yong Kwang' and 'Mok Yong Kong' refers to one and the same person. The statutory declarations aforesaid are a telling piece of evidence of the first defendant's consistency and shows that the first defendant is not creating evidence it being done long before any altercation between the plaintiff and defendant.

(3) The statutory declarations of two other family members namely the elder sister, Mok Kwee Eng and brother-in-law Lee Han Hong which was marked as exhs P13 and P14 respectively wherein the deponents confirms that the name 'Boh Yong Kwang' and 'Mok Yong Kong' refers to the same person.

(4) The uncontradicted affidavit evidence of Lee Han Hong and Mok Kwee Eng both affirmed on 3 December 1998 and admitted in evidence through the agreement of the parties by dispensation of their presence and marked P35 and P36 respectively which evidence has not at any time been challenged by the plaintiff and hence remains uncontradicted evidence that the first defendant is 'Boh Yong Kwang'.

(5) The undisputed evidence in P61 that the late father had only one Chinese name, namely 'Mok Kia Fook' and that the middle name of the siblings as is the first defendant is 'Yong' as evidenced by exh P 64.

(6) The statutory declarations by the plaintiff's solicitors, Zainal Abidin bin Mustaffa in P58 of the two different English spelling of the first defendant's name.

(7) Finally, the evidence of Goh Yong Sing (DW2) the Registrar of the Johor Bahru Subordinate Court who gave evidence as a certified court interpreter for Mandarin and Hailanese. DW2's evidence is unmistakably for the courts unreserved acceptance it. He is both an officer of the court and an independent witness. When asked which Chinese name the name 'Boh Yong Kwang' refers to he pointed to the] name 'Yong', ie the middle name of the first defendant appearing in P64. He further testified that he was very sure that the name 'Yong Kwang' could not refer to the name of the late father Mok Kia Fook appearing in P61. When asked how he could be so sure, DW2 explained that there was no way the father's name appearing in P61 could be pronounced anywhere near the sound 'Yong Kwang' whether pronounced in Hailanese or Mandarin. It is most telling that the learned counsel for the plaintiff chose not to cross-examine DW2 at all. Hence by failing to do so, the evidence of DW2 stands uncontradicted and correspondingly accepted in toto by the plaintiff.

(8) The above would have been enough evidence. But the defendants have produced even more evidence to show that 'Boh Yong Kwang' is indeed the first defendant. Firstly, the names engraved on the parents' tombstone (P28) and the translation (P44) thereof shows that the name of the first defendant is 'Yiong Kwang'. Both P28 and P44 are documents under Part 1 of the agreed bundle of documents, meaning that their contents are agreed and admitted; please see *Jaafar bin Shaari & Anor (suing as administrators of the estate of Shofiah bte Ahmad, deceased) v Tan Lip Eng & Anor* [1997] 3 MLJ 693. Secondly, there are the numerous statutory declarations and.affidavits affirmed by the first defendant as well as by third parties, some of which were made long before any dispute arose (eg P9, P33, P34, P35 and P36). Again, these are all under Part 1 of the agreed bundle of documents. Thirdly, P58 is the plaintiffs own application to enter a caveat on the Subject Lands, supported by a statutory declaration affirmed by the plaintiff's solicitor on the plaintiffs behalf. In that statutory declaration, it is clearly stated that the Subject Lands were 'registered in the name of Mok Yong Kong @ Boh Yong Kwang'. This is an evidence on oath the plaintiff himself had relied on.

[14] From the above, it becomes crystal clear that not only has the plaintiff failed to adduce any evidence that 'Boh Yong Kwang' is their late father but rather there are overwhelming evidence to the contrary. The evidence adduced by the defendants all point to the fact that 'Boh Yong Kwang' is the first defendant. Some of these evidence are either admitted by the plaintiff or totally uncontradicted. The evidence given by DW2 is particularly important and conclusive. It bears re-iteration that DW2's evidence is uncontradicted, as the plaintiff chose not to cross-examine him at all.

[15] By reason aforesaid the plaintiff has completely failed to establish the first essential element of his claim, even on balance of probabilities (let alone beyond reasonable doubt). On the other hand, the defendants did not sit back and simply required the plaintiff to prove his case (although in law they were entitled to do so). The Defendants took pro-active steps to adduce more than adequate evidence (both documentary and oral) to show that 'Boh Yong Kwang' is indeed the first defendant; and that 'Boh Yong Kwang' could not have been their late father. This reason alone is sufficient to defeat the plaintiffs claim.

[16] Coming to the issue of indefeasibility of title though the failure by the plaintiff to prove the first element above is fatal to his case and is sufficient to dispose of the matter nevertheless for the sake of cmpleteness, I shall embark to determine the issue of indefeasibility of title.

[17] The plaintiff did in his statement of claim allege that the second defendant had committed conspiracy (of a criminal nature) with the first defendant in order to defraud the plaintiff. However, during the trial the plaintiff did not adduce any evidence to support that assertion. It remains a mere allegation made by him alone, without any supporting evidence. When DW3 was cross-examined by counsel for the plaintiff, no question relating to the alleged conspiracy was asked. Neither was the allegation put to him. Credit must be given to the learned counsel for the plaintiff for not pursuing a mere allegation of fraud or conspiracy when there is no factual

foundation for the same. On the contrary, DW3 had testified to the fact that the second defendant is a bona fide purchaser, and this testimony was not challenged. It is not disputed that, at the time of accepting the transfer of the Subject Lands, the second defendant had absolutely no knowledge of any matter or dispute that might have transpired or arisen between the plaintiff and the first defendant

[18] During trial, the plaintiff did not seriously pursue his allegation of fraud and conspiracy against the second defendant. He practically abandoned ft. That being the case, the fact that the second defendant is bona fide purchaser (as. defined under the National Land Code) remains undisputed. It follows that the second defendant had acquired an indefeasible title (regardless of whatever the position may be between the plaintiff and the first defendant). The plaintiffs claim, so far as it relates to the Subject Lands and to the second defendant, must fail.

[19] Currently the law adopts the doctrine of immediate indefeasibility in Malaysia; please see *Adorna Properties Sdn Bhd v Boonsom Boonyanit @ Sun Yok Eng* [2001] 1 MLJ 241 (pp 49–55 of the second defendant's Bundle of Authorities). This puts the position of the second defendant beyond doubt.

[20] However, even if one were to apply the doctrine of deferred indefeasibility to the facts of this case, the result is the same for the reason that the transfer of the Subject Lands from the first defendant to the second defendant did not involve any element of forgery, technical or otherwise. The Memorandum of Transfer was not forged. The person who executed it as the transferor (ie the first defendant) was the person who was intended or meant to have executed the same. If at all, the plaintiffs allegation of fraud (which is not established) only concerns a previous transaction (namely the rectification of the spelling of name from. 'Boh Yong Kwang' to 'Mok Yong Kong' on the documents of title). It does not concern the transfer from the first defendant to the second defendant. In other words, the transfer from the first defendant to the second defendant is not the 'immediate' dealing in respect of which an allegation of fraud has been made (but not established). That transfer is a dealing that is 'deferred'. It cannot be equated with the rectification of the spelling of name, and cannot be tainted by whatever allegation that may be made against such rectification (let alone that in our case such allegation has not been proven). The second defendant has an indefeasible title, even if the doctrine of deferred indefeasibility is to be applied.

[21] For the foregoing reasons, it is my judgment that the plaintiff has failed to establish any of the essential ingredients that are (necessary to enable him to succeed. By contrast, the Defendants have adduced adequate, credible and uncontradicted evidence to show that the plaintiffs allegations do not hold water. The case became very clear, especially after the evidence of DW2 which was not disputed by the plaintiff. In conclusion there is only one appropriate decision to make namely that the plaintiffs claim be dismissed with costs which I accordingly so order.

[22] There is also a further order to be made, in respect of the caveat lodged by the plaintiff on the property on 9 May 2003 some five years after the plaintiff filed his

suit which is that the caveat lodged by the plaintiff vide Nombor Perserahan: 218/2003 be and is hereby ordered to be removed forthwith.

Plaintiff's claim dismissed with costs.

Reported by Loo Lai Mee